

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

STACEY L. SCHMADER

10914 Clay Lick Road

Mercersburg, PA 17236

and

LETICIA O'DELL,

7976 McCreary Road

Broadview Heights, OH 44147

and

CHAD NICHOLSON,

107 Center Street

East Pittsburgh, PA 15112

and

KAI HUSCHKE,

2711 S. Oak Street

Spokane, WA 99224

and

MARKIE MILLER,

3754 Grantley Road

Toledo, OH 43613

and

MALINDA CLATTERBUCK,

550 Tueqyan Glen Road

Holtwood, PA 17532

and

MICHELLE SANBORN,

102 Lakeview Heights

Alexandria, NH 03222

and

CRYSTAL JANKOWSKI,

6030 Vistamar Road

Toledo, OH 43611

Plaintiffs,

v.

CIVIL ACTION

NO.

NOTICE OF REMOVAL

THOMAS ALAN LINZEY, in his :
Individual and Official Capacities; :
1320 North Hollis Street :
Spokane, WA 99201 :
and :
TAMMY BELINSKY, in her Individual :
and Official Capacities; :
9544 Pine Forest Road :
Copper Hill, VA 24079 :
and :
FRED WALLS, in his Individual and :
Official Capacities; :
8048 Lincoln Way West Street :
Thomas, PA 17252 :
and :
EDWARD WELLS, in his Individual :
and Official Capacities; :
1881 Scotland Avenue :
Chambersburg, PA 17201 :
and :
COMMUNITY ENVIRONMENTAL :
LEGAL DEFENSE FUND :
10914 Clay Lick Road :
Mercersburg, PA 17236 :
and :
THE CENTER FOR DEMOCRATIC :
AND ENVIRONMENTAL RIGHTS, :
1320 North Hollis Street :
Spokane, WA 99201 :
: :
Defendants. :

**TO: HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ON NOTICE TO:

Clerk of Court, United States District Court for the Middle District of Pennsylvania
Ronald Reagan Federal Building & U.S. Courthouse
228 Walnut Street
Harrisburg, PA 17101

Prothonotary, Franklin County Civil Courthouse
157 Lincoln Way E.
Chambersburg, PA 17201

David M. Koller, Esquire
Sarah R. Lavelle, Esquire
Koller Law LLC
2043 Locust Street, Suite 1B
Philadelphia, PA 19103
Counsel for Plaintiff

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendants Thomas Alan Linzey, Tammy Belinsky, Fred Walls, Edward Wells, Community Environmental Legal Defense Fund, and The Center for Democratic and Environmental Rights (collectively “Defendants”), by and through their undersigned counsel, hereby file this removal of the state court action brought by Plaintiffs Stacey L. Schmader, Leticia O’Dell, Chad Nicholson, Kai Huschke, Markie Miller, Malinda Clatterbuck, Michelle Sanborn, and Crystal Jankowski (collectively “Plaintiffs”), currently pending in the Court of Common Pleas of Franklin County, Pennsylvania at Docket No. 2019-4895 (“State Court Action”), pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

All Defendants consent to this removal, and therefore, the unanimity requirement is met pursuant to 28 U.S.C. § 1446(b)(2)(A).

THE UNDERLYING STATE COURT ACTION

1. Plaintiffs commenced the State Court Action by filing a Complaint for Preliminary Injunctive Relief against Defendants on December 12, 2019. A true and correct copy of the Complaint and Exhibits is attached as **Exhibit A** pursuant to 28 U.S.C. § 1446 (a).

2. The Complaint and Exhibits were personally served on Defendant Thomas Linzey on December 16, 2019. All other Defendants were served after Mr. Linzey. A true and correct copy of the Docket Sheet, reflecting service on Defendant Wells on December 18, 2019, and Defendant Walls on December 19, 2019, along with all other filings in the State Court Action are attached as **Exhibit B**.

3. Plaintiffs' Complaint alleges violations of the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO").

4. In particular, Plaintiffs' Complaint alleges that Mr. Linzey engaged in a "pattern of racketeering activity," consisting of two specifically pled incidents. (See Ex. A ¶¶ 149-161.)

5. Because Plaintiffs' allegations are premised upon alleged violations of a law of the United States, *i.e.*, the federal RICO statute, Plaintiffs' claims are subject to federal question jurisdiction pursuant to 28 U.S.C. § 1331.

6. Pursuant to 28 U.S.C. § 1446 (a), Defendants hereby file this Notice of Removal to this Court.

JURISDICTION PURSUANT TO 28 U.S.C. § 1331

7. “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331

8. Here, Plaintiffs allege violations of the federal RICO statute.

9. Accordingly, the State Court Action arises under the laws of the United States.

10. “Any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a)

11. As such, removal to the United States District Court for the Middle District of Pennsylvania is proper, as this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(a).

PROCEDURAL REQUIREMENTS

12. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it has been filed within thirty (30) days after service of the Complaint on

Defendants in the State Court Action, which occurred on or about December 16, 2019.

13. Pursuant to 28 U.S.C. § 1446(b)(2)(A), no other defendants have been named, joined or served in the State Court Action.

14. Venue is proper in this Court as this is “the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a). The State Court Action is currently pending in the Court of Common Pleas of Franklin County, Pennsylvania, which is located within the geographic boundaries of the Middle District of Pennsylvania. Allocation is proper in Harrisburg because the action is pending in the Court of Common Pleas of Franklin County, Pennsylvania, Lead Plaintiff Stacey Schmader is a resident of Franklin County, Defendant CELDF are located in Franklin County and the allegations in Plaintiffs’ Complaint allegedly arose in Franklin County. Franklin County is in the Harrisburg vicinage line for the purposes of case assignment.

15. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint for Permanent Injunctive Relief and Exhibits is attached hereto as **Exhibit A**.

16. Pursuant to 28 U.S.C. § 1446(d), Defendants are simultaneously filing copies of this Notice of Removal and any related papers with the Prothonotary’s Office of the Commonwealth of Pennsylvania, Franklin County Court of Common Pleas, in order to effectuate removal of this action pursuant to 28 U.S.C. § 1446(d).

17. Simultaneous with the filing of this Notice of Removal, Defendants have also given written notice of the filing of this Notice of Removal to all parties as required by 28 U.S.C. § 1446 (d).

CONCLUSION

18. Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendants respectfully request that the above-captioned matter, now pending in the Court of Common Pleas of Franklin County, Pennsylvania, be removed to the United States District Court for the Middle District of Pennsylvania.

19. By this Notice, Defendants do not waive any objections they may have to service, jurisdiction, or venue, or any other defenses or objections to this action.

20. Defendants intend no admission of act, law or liability by this Notice, and reserve all defenses, motions and pleas.

21. Defendants reserve all defenses and objections to the Complaint including, but not limited to, denial: (i) of the material allegations contained therein; (ii) that Plaintiffs state any claim upon which relief may be granted; and (iii) that Plaintiffs have been damaged in any manner whatsoever.

22. Defendants reserve the right to amend or supplement this Notice of Removal as necessary and appropriate.

WHEREFORE, Defendants hereby pray that this action pending in the Court of Common Pleas of Franklin County, Pennsylvania, be removed, in its entirety, to the United States District Court for the Middle District of Pennsylvania for determination; that all further proceedings in the state court be stayed; and that Defendants obtain all additional relief to which they are entitled.

Respectfully submitted this 13th day of January 2020,

KAUFMAN DOLOWICH & VOLUCK, LLP

/s/Gregory F. Brown

Gregory F. Brown, Esq.

Pa. Id. No. 90239

Attorney for Defendants

Tammy Belinsky, Fred Walls,

Edward Wells and Community Environmental

Legal Defense Fund

JACKSON LEWIS P.C.

/s/Eileen K. Keefe

Eileen K. Keefe, Esq.

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Attorneys for Thomas Alan Linzey

WEINHEIMER HABER & COCO

/s/Bethann R. Lloyd

Bethann R. Lloyd, Esq.

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Attorney for Defendants

*Thomas Alan Linzey and Center for Democratic
and Environmental Right*